IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 26TH OCTOBER 2006 / 4TH KARTHIKA 1928

MFA.No. 776 of 1999()

OPMV.76/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THODUPUZHA

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APPELLANT:

MOLLY, W/O.JOHNSON, MALAKUDIYIL HOUSE,
VAZHAKULAM, MANJALLOORE VILLAGE,
MUVATTUPUZHA TALUK.

BY ADV. SRI.RAJU JOSEPH

RESPONDENTS:

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1. K.S.VENUKUTTAN, S/O.SANKARAN ACHARI,
   AGED 28 YEARS, KAUKAPPILLILTHAZHE HOUSE,
   ALAKODU P.O., THODUPUZHA TALUK.

2. JAMES E.S., VADAKKETHAMARASSERIL HOUSE,
   MOOLAMATTOM P.O., THODUPUZHA.

3. THE BRANCH MANAGER, ORIENTAL INSURANCE CO.LTD.,
   THODUPUZHA.

BY ADV. SRI.K.G.ANIL BABU
SRI.CYRIAC KURIAN
SRI.N.A.MURALEEDHARAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 26/10/2006, ALONG WITH MFA NO. 1294 OF 1999 ,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Thottathil B. Radhakrishnan, J.

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M.F.A.Nos.776 & 1294 of 1999

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Dated this the 26th day of October, 2006.

JUDGMENT

These two appeals are by the claimants, who were allegedly injured in a motor accident on 10-8-1993. According to both of them, they were pedestrians and the offending jeep hit against them. It also appears from the materials on record that the jeep capsized resulting in injuries to various others, including passengers in the jeep.

2. The Tribunal jointly tried the petitions, however, enlisting different documents produced by different claimants under separate indexing, thereby leading to some confusion while referring to those exihibits. Ultimately, the Tribunal came to the conclusion that the incident was one where the jeep overturned and all the claimants, including the appellants, were passengers in the jeep. So concluding, the Tribunal came to the finding that the appellants had made a false version of their case when

they pleaded that they were pedestrians. Accordingly, the claim petitions, from which these appeals arise, were dismissed.

3. In the claim petitions filed by the claimants, it was specifically stated by them that they were pedestrians and that the vehicle hit them. They gave evidence before the Tribunal and were subjected to cross-examination. There was no contra evidence either from the owner or the driver of the offending vehicle. The only material on which the Tribunal relied on to hold against the version of the claimants was that, they were witnesses arrayed in the charge sheet filed by the police. The mere enlisting of the claimants, among the witnesses in charge sheet, would not lead to the inference that they were passengers in the vehicle. On a perusal of the charge sheet, which is among the exihibits in the connected cases, including in O.P.(MV) No.76 of 1994, it can be seen that the said documents cannot be used to contradict the stand taken by the claimants, while they gave evidence to the effect that they were pedestrians and were hit by the vehicle.

Under such circumstances, the Tribunal ought to have held that they were third parties and not passengers in the vehicle. In this view of the matter, the dismissal of the claim petitions of the appellants, namely, O.P.(MV)Nos.76 of 1994 and 132 of 1994, is liable to be set aside. I do so. The appellants are entitled to compensation under Section 166 of the Motor Vehicles Act, 1988 and that the insurer is liable to satisfy the said award.

4. However, the court below has not properly fixed the compensation due to the claimants in this case. Having heard the counsel for the parties, including the availability of other materials, at least regarding O.P.(MV)No.76 of 1994, I deem it appropriate to remand this case, though it relates to the year 1998.

In the result, subject to the findings on the question of negligence and the liability of the insurer, as entered into above, the awards in O.P.(MV) Nos.76 of 1994 and 132 of 1994 are set aside and the

case is remitted to the Tribunal to enter a finding on the question of quantum of compensation in both these cases after giving sufficient opportunities to the parties to adduce further evidence and if necessary, produce further statements by way of pleadings. The parties will appear before the Tribunal on 30-11-2006 and the Tribunal will make an endeavour to finally dispose of the matter within four months therefrom.

Thottathil B.Radhakrishnan,
Judge.

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Thottathil B. Radhakrishnan, J.

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M.F.A.Nos.776 & 1294 of 1999

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JUDGMENT

Dated:26-10-2006